

SUPPLEMENT
TO THE
FINAL REPORT
ON THE
SURVEY AND SETTLEMENT OPERATIONS
IN THE
DISTRICT OF DACCA

FOR THE PERIOD

1916-18

BY

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CALCUTTA

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SUPPLEMENT

TO THE

FINAL REPORT ON THE SURVEY AND SETTLEMENT OPERATIONS

IN THE

DISTRICT OF DACCA.

INTRODUCTORY.

1. The Final Report on the Survey and Settlement Operations in Dacca, which began in the field season of 1910-11, was submitted to Government in 1917. When I relieved Mr. Ascoli on 7th November 1916, the following branches of work were pending :—

- (1) Final Publication and Recovery of costs in C and D Blocks—Revenue *thānās*—Rāipurā, Kāpāsiā, Sābhār, Kerāniganj and the riparian area in Tippera.
- (2) Case work of B, C and D Blocks, *i.e.*, Munshiganj and Nārāyan-ganj Sub-divisions and Sadar Sub-division, excluding Nawāb-ganj Revenue *thānā*.
- (3) Completion of diara proceedings of Dāudkāndi *thānā* in Tippera and settlement of two Tippera Estates. Completion of records and maps of *mauzas* affected by the *diara* proceedings.
- (4) Completion of 16 inches sheets of Tippera *diara*, together with topographical maps, *diara* volumes, boundary mark *mujmili* and registers.
- (5) Handing over the records to the Collectorate and closing down the Operation finally.

This is the Supplementary Report promised by Mr. Ascoli in his letter forwarding the Final Report. It deals with the case work and other stages of the settlement, which could not be fully treated in the main report.

Final Publication and Recovery of costs under Section 114.

2. For reasons explained in paragraph 274 of the main report, there was no recovery of costs in Dacca Town, and no *khatiyāns* and maps were distributed free. Great interest was, however, taken by the public in the final publication, and on the application of the Collector, as well as of the Municipal Commissioners, under the special orders of the Director of the Department of Land Records, Bengal, records were kept open for inspection for a total period of 4 months.

3. **Recovery.**—The principles of apportionment have been described in paragraphs 338 and 339 of Mr. Ascoli's report. The outbreak of the European war, which temporarily reduced the price of jute, the main stay of the Dacca tenantry, from an average of Rs. 12 to an average of Rs. 4 per maund, might easily have wrecked the recovery programme. But the issue of printed *khatiyāns* with their own names on them and of maps showing

their houses and fields proved such an attraction to the Dacca cultivators that they never hesitated, even at the cost of borrowing money privately, to pay up the costs. Over 98 per cent. of the *rāiyati* demands were collected amicably. Despite the low price of jute, the camps remained overcrowded from morning to evening. A dismissed Settlement Peshkar tried to swindle the people of Mirpur, in Kerāniganj *thānā*, by posing as a Recovery Officer, but, before he could raise any money, the news reached me, and I had the man arrested. He was sentenced to 18 months' rigorous imprisonment.

The landlords, on the contrary, were very slow in paying up their dues. They first tried to postpone recovery work by memorialising Government through the Peoples' Association. Then one of the leaders of the Dacca Bar, aided by the moving spirit among the Revenue Agents, continued to circulate the rumour that the recovery rates were not legally payable, inasmuch as the rate-payers had no means of auditing the Settlement accounts and as no copy of the apportionment order was published in the official gazette. The conduct of the Revenue Agent was so objectionable that the Collector had to draw up proceedings against him under the Legal Practitioners' Act before this movement died down.

4. Certificates.—The following statement shows the results of Recovery work :—

Total sum recoverable Rs. 22,77,139. Total realised :—

	Ra.
Amicably paid in recovery camp ...	19,52,367, or 86 per cent.
Amicably realised after the issue of certificates in 13,006 cases ...	2,32,206. or 10 „
Realised by attachment of property in 1,080 cases ...	28,591, or 1.3 „
By sale in 46 cases	1,540
Total realised ...	22,14,704
Total not realised :—	
Under orders of the Director of Land Records 10,102 cases ...	52,301
(Sums of less than Rs. 10.)	
Struck off for dilution, etc., 1,320 cases ...	10,134, or 2.7 per cent.
Total unrealised ...	62,435, or 100 „

In view of the organised opposition of the land-owning middle classes it would have been dangerous to show any indulgence or slackness in realising arrears. A certificate was issued in each case of default, but defaulters

were allowed every facility to pay up. In thousands of cases co-sharers who could not agree to make joint payment amicably waited to have certificates issued against them, so that one co-sharer could pay the whole amount and realise his dues from the other co-sharers by contribution suits, there being a popular notion that, unless the amount were paid under duress, a contribution suit would not be likely to succeed. In spite of the unprecedented financial conditions created by the European war, there were only 25,554 certificate cases in all, compared with 43,985 cases in Bākarganj. Of these, 11,422 cases were struck off or cancelled. In 13,006 cases payment was made as soon as process was issued. In 1,126 cases only, representing 1·3 per cent. of the total demand, had further steps to be taken.

Commutation.

5. Under Section 40 of the Bengal Tenancy Act an occupancy *rāiyat* on produce rent can apply for commutation of his rent in kind into money rent. There were 585 applications under Section 40. These cases, though comparatively few in number, created a considerable amount of sensation and gave the Settlement Department some trouble. The vexed question about the status of *bargādārs* in Dacca was fully dealt with by Mr. Ascoli in the report (Appendix X). In most cases the middle class, in conjunction with the lawyers, relying on the High Court Ruling reported in 14 C. W. N., wanted the produce-paying *bargādārs* to be treated as hired labourers, but, as a general rule, the Settlement Department could not accept this view of the law, and many *bargādārs* were recorded as occupancy *rāiyats*. The *bargādārs* in Mānikganj and Munshiganj were slow to recognise their own rights, and did not apply for commutation on the basis of the record-of-rights. But the inflammable people of Raipurā and Kāpāsīā *thānās* seized this opportunity and filed over 500 applications as test cases. For the time being there was considerable feeling amongst the *bargādārs* in these two *thānās*, and they enlisted the sympathy of the general body of cultivators in their favour. Ballads were composed by the village poets in the praise of commutation proceedings, and these were sung by the rustics in furtherance of their cause. Of these cases, three hundred and thirty-eight were disposed of before final publication. They were mostly dealt with by *mé* after careful local enquiries. It was not an easy problem to settle cash rents in commutation proceedings in a district like Dacca, where the average cash rent was Rs. 3, but the average value of half of the produce was calculated at Rs. 18-12 per acre. Even if the cash rents were doubled, which was hardly allowable, the landlords would lose Rs. 12-12 per acre per year. Even if the landlords' profit were to be reduced to one-fifth of the gross produce of the soil, the *rāiyatī* rent would have to be raised 250 per cent. over the average rate. Then again it was found that if a landlord sold an acre of land settled with ordinary occupancy *rāiyats*, he would not get more than Rs. 75 to Rs. 90, but if he sold an acre of land let out to *bargādārs*, he could raise at least Rs. 300 to Rs. 400. Ordinarily, no commuted rent was more than 75 per cent. in excess of the average rent. So pecuniarily the landlords proved great losers, and this accounts for the opposition that was engineered against these proceedings. Formerly, an order in a commutation proceeding was not liable to be contested in a Civil Court on any ground, but just about this time the High Court ruled that the landlords could question the competency of the Revenue Court to entertain applications under Section 40 if there was a dispute about the status of the applicant. As the main issue in all cases was not the rent but the claim of the landlords that the *bargādārs* were labourers, and not tenants, this judgment made the position very difficult. I have reproduced in the Appendix a note on the legal aspect of the question, which I drew up and submitted for consideration of the Department. It was decided to adjourn the cases for disposal till after the final publication of the record-of-rights, when the landlords would have had a chance of contesting the status under Section 106, and any entry that remained would have a legal presumption of correctness, but the landlords did not file any suit. No claims under Section 120 were established, and the status of

occupancy *rāiyat* remained in the record to help the *bargādārs* in the commutation cases which then came on for hearing.

6. I have tabulated below the results of these commutation proceedings :—

Rent commuted in ...	393 cases	Appeals.	
Applications were withdrawn in ...	56 "	Upheld in ...	72 cases
Struck off in ...	90 "	Rent modified in ...	6 "
Commutation refused on ground of hardship under Clause 6 of Section 40 in ...	46 "	Appeal allowed on the ground of hardship in ...	3 "
Total ...	585 cases	Total ...	81 cases

Corresponding to the enthusiasm amongst the tenants, there was a corresponding determination amongst the landlords to crush the *bargādārs*, and in over fifty cases the applicants were compelled to withdraw; some of the landlords forced their tenants to submit, and compromise petitions were filed commuting the produce rents to sums very nearly approximating to the cash value of the produce paid. The question of the admissibility of such compromises as were in violation of the spirit of Section 178, Clause (g), was discussed with the Director of Land Records, and with his concurrence such cases were struck off, as these compromised rents were not commuted rents within the meaning of Section 40. In one case the defendant landlord moved the Civil Court for an injunction on the Commutation Officers for restraining him from proceeding under Section 40 pending the decision in the Civil Court about the status of the applicants. When the Civil Court held that the applicant was not a *rāiyat*, the latter withdrew. The most important of these cases were those filed against Babu Swarna Kamal Chakraverty, a retired Deputy Collector, and his brother, Rajani Kamal. They opposed the applications on the strength of their *kabuliyats*, which characterised the applicants as hired labourers. The terms of the *kabuliyats* were scrutinised by the Department (*vide* Appendix) before the Commutation Officer allowed these applications disposing of the claim of *khāmār* right and the plea of hired labourers. Mr. F. W. Robertson, the then Additional Collector, and the Hon'ble Mr. French, Commissioner, dismissed the appeals. The landlords then sued these tenants in the Small Cause Court for the share of the produce. The tenants pleaded that rent suits should have been filed and at the rates settled by the Commutation Officer. The Small Cause Court, however, brushed aside not only the Commutation proceedings, but the record-of-rights, on which the commutation was based, and decreed the price of paddy. The tenants moved the High Court, which confirmed the order of the Small Cause Court, holding that the defendants were hired labourers on the strength of their *kabuliyats*, that the commutation order was bad in law, and that the Small Cause Court was competent to ignore the commutation order without waiting for a regular title suit to quash the order of the Revenue Officer. This ruling, which has been quoted in XXIII C. W. N., page 614, has created a situation worse than that which prompted my note of 1915. The problem upon which the Revenue Courts and the Civil Courts have adopted a point of view so diametrically opposite is so important that I have reproduced at length in an Appendix the judgments of the Collector, the Commissioner and the High Court. Since the above ruling whoever has cared to go to the Small Cause Court and to claim produce rent against the plea of commuted rent has succeeded invariably, even though no *kabuliyat* was produced in individual cases.

7. This is a situation which cannot be viewed with equanimity by anyone having sympathy for the *bargādārs*. If the *bargā* system is an evil, the existing system of commutation under the slippery position of law, which leaves the *bargādārs* to the tender mercies of the landlords and of the Civil Courts, is a greater evil. The widely divergent views of the Revenue authorities and of the Civil Courts can only be harmonised by the Legislature

establishing the status of the *burgādār* on an unassailable footing. If I gauge the feeling of the Eastern Bengal landlords correctly, they have little objection to the *bargādārs* being given occupancy rights, provided the latter do not come up under Section 40 to claim a cash rent of Rs. 4 to Rs. 5 instead of paying produce worth Rs. 16 to Rs. 20 per acre. Those landlords, if they amicably settle the *bargā* land at Rs. 4 a year, invariably get a premium at Rs. 300 per acre, but if this settlement be effected through Revenue Courts in the shape of commutation, they lose this sum. This is why they feel strongly over the whole question of occupancy rights and commutation. They seem to hold that if the *bargā* system is economically unsound, why of all persons should the particular landlords for the time being be victimised as they themselves may not be responsible for the creation and continuance of this system. There is much to be said in support of this contention, and many of the Revenue Officers are of opinion that the landlords should be compensated against their pecuniary loss arising out of commutation by these *bargādār* themselves. But the question is whether these *bargādārs*, who are mostly landless labourers, can afford to pay in full to improve their status. I venture to think that—while the *bargādārs* who are being directly benefited by these proceedings should certainly pay the major share of the compensation—a share may be paid by the State. The principle of Government's paying this compensation is by no means new. It was mooted by Mr. W. J. Reid, I.C.S., Collector of Bākarganj, eleven years ago (Appendix, Bākarganj Report, page 51, para. 5), and the history of Irish land legislation might supply a precedent, though not exactly on parallel lines. Many authorities may not agree with Mr. Reid, and will question the justification for Government's contributing towards this acquisition of rights on behalf of *bargādārs*. But one who has seen the actual effect of commutation in Eastern Bengal can only ask for two alternatives—

- (a) Repeal or modification of Section 40 as it stands, or
- (b) State contribution to remove the iniquity underlying the application of this section.

Correction of Records under Section 108 A.

8. This section was inserted in the Bengal Tenancy Act by the amending Act of 1908 (E. B. & A.), to provide for the correction of those *bonâ fide* mistakes which are not of sufficient importance to justify the institution of a regular suit under Section 106. Now a mistake may be a mistake of the Court or of the parties themselves. If there be a *bonâ fide* mistake of the Court, the mistake may be corrected at any time by virtue of the Court's inherent powers under Section 151, C. P. C. So all *bonâ fide* clerical and printing mistakes were corrected, even after the expiry of 12 months. But the public were slow to move this Department for the correction of a mistake of a mere clerical nature. They filed applications for cancellation of *bargā khatiyāns* or for altering the status of the *jotdārs* and of their under-tenants. If, as was usually the case, the *bargādārs* had gone away, or been evicted subsequently, but at the time of the framing of the records, or sometimes even at the time of final publication, had been in possession, we could not cancel the *bargā khatiyāns*. Similarly, it was not our practice to change any record of possession altered by transfer, succession or otherwise. We did not deal with the question of the status of *jotdārs* under Section 108 A., even though the correction was prayed for by all concerned, for the alleged *bonâ fide* mistake was after all not a mistake of fact. In some cases applications were filed under Section 108 A. for matters which could only be dealt with under Section 106, and the applications were so filed because the time limit for institution of Section 106 suits had already expired. In two cases the *zemindārs* of Pubāil and their tenants filed applications under Section 108 A. for correction of rent entries on the ground of *bonâ fide* mistakes, but it was discovered that there was no mistake in the record, and the rents were rightly recorded, but as the landlord could not file applications

under Section 105 in time for settlement of fair rent, they sought to enhance the rents by compromise and to get the enhanced rents incorporated in the record-of-rights as the existing rents payable. I have classified below the 108 applications disposed of :—

Analysis of applications under Section 108A., Bengal Tenancy Act.

Serial number.	THANA NAME.	Mistake in residence.	Mistake in rent.	Mistake in modafat.	Basat mistake.	Pricing mistake.	Mistake in possession.	Mistake in share.	Mistake in landlords column.	Status.	Area.	Tausi.	Pacher's name.	Husband's name.	Kkwal number.	Class of land.	Boundary.	Total allowed.	Total rejected.	Grand Total.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
1	Nawabganj ...	2	43	11	2	1	34	7	8	1	1	3	1	1	2	...	...	117	34	151
2	Hariampur ...	1	17	6	...	2	20	5	2	6	...	2	1	...	3	3	...	68	38	106
3	Mānikganj ...	...	14	1	3	4	24	...	5	7	1	1	1	...	2	3	1	73	53	126
4	Saio ...	...	15	4	5	3	19	9	2	8	2	6	2	...	1	...	...	70	37	107
5	Srinagar ...	...	51	8	31	27	53	33	42	31	10	2	4	1	...	2	5	306	61	366
6	Munshiganj ...	...	19	4	24	15	52	18	14	8	10	2	4	...	2	...	...	171	53	224
7	Narayaniganj ...	...	23	6	12	14	53	58	14	8	3	1	1	...	3	...	...	180	36	216
8	Rupganj ...	...	1	8	7	1	21	16	6	6	5	5	1	...	...	...	...	166	41	207
9	Kāpasia ...	...	70	3	3	24	23	26	1	5	2	2	4	1	...	...	...	162	75	237
10	Rāpura ...	...	3	10	4	1	35	18	29	5	13	3	1	1	...	...	...	128	98	226
11	Kāraniganj ...	...	1	27	11	3	8	13	53	2	10	5	1	1	...	...	...	145	93	238
12	Sābhār ...	...	51	3	1	2	8	52	1	...	6	8	4	...	...	...	...	183	44	227
13	Nabinagar ...	...	6	3	1	3	2	1	...	...	...	...	...	...	...	...	...	16	5	21
14	Dādakundi ...	...	1	2	2	6	2	1	...	3	...	3	...	...	...	...	...	20	1	21
15	Sadar ...	...	30	5	3	7	2	...	...	...	...	...	...	...	...	...	...	48	15	63
GRAND TOTAL ...		11	396	77	92	171	289	263	104	93	49	55	22	12	13	8	7	1,777	684	2,461

Decision of disputes under Section 106.

9. Under this section one can apply for correction of a record-of-rights challenging any entry therein or omission therefrom. The scope of Section 102, under which the entries are made, is to record the existing state of facts. Under Section 106, according to the latest High Court rulings, the Revenue Officer cannot go beyond the facts of possession at the date of preparation of the record. So this section as it now stands is but a glorified form of Section 103A. As the Revenue Courts can no longer go into the question of disputed title, there is not much enthusiasm for filing Section 106 suits. The number of suits for disposal was only 2,015 of which 1,795 were disposed of by the Revenue Officers and 220 cases were transferred to the Civil Courts. I have analysed in the following table the results of the cases already disposed of. Some of these cases were of a very simple nature and could have been dealt with under Section 108A. These suits were, as a rule, heard at head quarters, and if the defendants did not attend on summons, a postal notice was invariably served before the cases were heard. *Ex-parte* suits had to be dismissed, for the plaintiffs seldom succeeded in establishing a *prima facie* case rebutting the presumption arising out of the record-of-rights. So much precaution was taken that only two applications came up for review. The most interesting and difficult of 106 suits were the cases affecting the status of *bhadrak lok jōtdārs*, who were recorded as tenure-holders, and of *bargādārs* under them, who were recorded as occupancy *rāiyats*. Compromise petitions were filed in these cases signed by the *jōtdārs* and their landlords, but as they prejudicially affected the interests of *bargādārs*, who were not made parties, they were rejected under Section 109B., and the cases dismissed for non-joinder of necessary parties. The wisdom of dismissing such cases on the ground of non-joinder of parties was doubted by the superior Revenue authorities, and it was apprehended that the Appellate Courts would not uphold these decisions, because some time before the High Court had ruled (21 C. W. N., 427) that no Section 105 case against a tenant could fail for not making the under-tenant a party, if the status of the tenant was disputed. Instructions were accordingly issued by the Director of Land Records to issue notices on the *bargādār rāiyats* at the cost of the plaintiffs, and after this no case was allowed to fail on the ground of non-joinder of parties. I may be

permitted to note, however, that in one case, in which we dismissed the suit on the ground of defect of party and consequent limitation for adding new ones, the Special Judge upheld the decision, accepting our old view that the *bargādār* was a necessary party, and if the status of the landlord were allowed to be reduced to that of an occupancy *rāiyat*, the record-of-rights would show two sets of occupancy *rāiyats* over the same parcel of land. The Special Judge distinguished these cases from the case reported in XXI C. W. N. The Special Judge adds: "The case of Jogendra Mohan Das" (C. W. N. 21, 427) is not parallel, because in that case the proceeding was one, under Section 105, for settlement of fair rent, in which the under-tenants were not directly affected in the same way as the tenants in these cases. The principle that a suit shall not fail for non-joinder of parties is not universal, *e.g.*, in a partition suit every person interested in the right under partition must be made a party. The present case seems to me of the same nature. The tenants of *khatiyān* Nos. X X X are so vitally interested "that this suit should not proceed without them."

10. Another group of cases of a very interesting nature cropped up in Nārāyanganj *thānā*. The *zemindārs* of Duptara effected certain illegal enhancements on the eve of the settlement operations, enhancing rents from Rs. 3 to about Rs. 4-8 per acre. During attestation the old rents were recorded. No objection was filed under Section 103A., nor any application for settlement of fair rent under Section 105. But they filed suits under Section 106, and written statements were filed by the tenants, accepting the rents claimed. The facts were reported to the superior Revenue authorities, and the cases had to be decreed, as there was no legal means of evading this end for the tenants refused co-operation and production of their old papers.

Two hundred and twenty cases between the rival *zemindārs* of Baliādi and Srifaltali in the Revenue *thānā* of Sābhār, which were filed very late, were transferred to the Civil Courts, and are now proceeding. It was proposed to transfer the Section 106 cases of Dacca and Nārāyanganj towns to the Civil Courts, but the parties opposed the idea. The defendants in no case raised the plea that the provisions of the Bengal Tenancy Act were not applicable, though the *pāttās* and *kabuliyats* under which the tenancies were created showed that they were leases of dwelling-houses and should properly be governed by the Transfer of Property Act.

There were 49 appeals to the Special Judge, 2 appeals were withdrawn, 1 remanded, 8 modified or reversed and 38 upheld—

Analysis of cases under Section 106, Bengal Tenancy Act.

Serial No.	Name of thana.	Total number of cases disposed of.	Decreed <i>ex-parte</i> .	Compromised.	Rejected and struck off.	Withdrawn.	Decreed after contest.	Dismissed after contest.	Dismissed for default.	Records modified.	Records not modified.
1	2	3	4	5	6	7	8	9	10	11	12
1	Nawābganj ...	46	12	11	5	3	12	2	1	35	11
2	Harirāmpur ...	37	3	3	6	4	13	...	8	19	18
3	Mānikganj ...	114	24	23	17	29	12	...	9	59	55
4	Seālo ...	43	13	11	10	4	3	...	2	27	16
5	Srinagar ...	167	42	42	20	41	8	5	9	92	75
6	Munshiganj ...	119	27	27	10	25	12	...	18	66	53
7	Nārāyanganj ...	155	38	46	10	34	18	4	5	102	53
8	Rupganj ...	169	33	57	25	29	5	4	16	94	75
9	Kāpāsia ...	161	28	38	20	49	5	5	16	71	90
10	Raipurā ...	235	53	66	37	45	5	18	11	124	111
11	Kerāniganj ...	287	89	70	39	56	11	12	10	170	117
12	Sābhār ...	215	43	117	16	17	7	7	8	167	48
13	Sadar ...	47	3	15	1	19	4	5	...	22	25
	Total ...	1,795	408	526	216	355	115	62	113	1,048	747

Settlement of fair rent under Section 105.

11. **Organisation and procedure.**—Though joint landlords are, as a rule, slow to combine together for a common cause, there was no backwardness in filing applications for settlement of fair rent of their joint tenants. Altogether 75,334 cases were filed against an estimate of 50,000 cases. In many instances one or more of the joint landlords was prevailed upon or bought over by the tenants so that no application could be filed. The cases, as a rule, were heard by Revenue Officers camping in the interior, so that the tenants against whom the applications were directed were not subjected to much hardship or expenditure. Another object of sending out the Revenue Officers to the interior was to help the parties to come to an amicable settlement without the intervention of the professional lawyers. In a district where the existence of real *mokarari* right is so very rare among the *rāiyats*, and where the rents run so very low that it does not amount to even one-twentieth of the gross produce of the soil, it is clear that, unless there is some material defect in the application, the landlord is entitled to some enhancement of rent. But many briefless Muktears and some junior Pleaders went about the country inciting the tenants to oppose the applications, and printed written statements priced at one anna each were obtainable in any part of the district. The tenants were persuaded to believe that the rents recorded in print in the settlement *khatiyāns* were to remain fixed and unalterable for ever. For the time being the voice of these licensed touts prevailed over the voice of the Revenue Officers, but gradually a change came over the *rāiyats* and they began to compromise the cases. But no case was compromised as a rule before the filing of a written statement, and, in many cases, not before the examination of several witnesses. In 12,880 cases there was no hope of compromise, and these cases were hotly contested. In Raipurā and Nārāyanganj *thānās* the combination of the tenants was very strong. At Kuripārā the principal tenant of the village, who had the hardihood to espouse the cause of the landlords, was murdered by his co-villagers. In many instances the landlords could not gather sufficient information for substituting the heirs of the defendants, who had died after the institution of the suit, and the cases had to be withdrawn in consequence.

12. **Costs.**—Costs, as a rule, were not allowed in these proceedings, inasmuch as the decree-holders derived all the benefit, but when it appeared that most reasonable terms of compromise were being rejected by the tenants owing to the wire-pulling of touts, and the cases were being unnecessarily prolonged, I had to issue instructions for awarding costs in typical cases to open the eyes of the tenants. In *thānās* other than Raipurā these instructions were carefully followed. In Raipurā the Revenue Officer improved upon the instructions and allowed costs wholesale. When this was brought to my notice, I drew up proceedings under Section 108 for revising the orders affecting costs, but abandoned the idea when I found that in certain other cases the Special Judge had allowed costs at Rs. 4 per *khatiyān*, a method of calculating the costs which, in group cases, would give a result still more serious to the tenant.

13. **Uniformity in results.**—In this district the Case Work Officers were unusually successful in dealing with cases involving the same principle on the same lines. Even in determining the rate of enhancement, different officers generally followed the same sliding scale based on the average village or *thānā* rate, and the parties had the satisfaction of knowing and feeling that practically the same scale of enhancement obtained in all camps. There was no real interference on my part, and if the result was uniform, it was because the individual officers themselves co-ordinated their ideas and standard of fairness, which is after all a comparative term. Perhaps the very existence of a Charge Officer vested with revisional jurisdiction under Section 108, and inspecting all camps at least once a month, had some thing to do with this spirit of co-ordination and uniformity.

14. **Ex-parte cases.**—With few exceptions, no case was taken up *ex-parte*, unless a notice had been served on the defendants by registered post. This no doubt caused delay in many cases, but the officers had the satisfaction of knowing that they were proceeding not merely on the

affidavit of their peons, not always a particularly honest class of men, but on the returns of postal employees also, who, as a rule, have maintained a reputation for honesty. The total absence of any applications for review confirms my idea that the extra precaution was not taken in vain. From the point of view of the tenants these *ex-parte* cases were perhaps better dealt with than the compromise cases. While in compromise cases the excess area was ordinarily admitted by the tenants themselves, in the *ex-parte* cases the landlords failed to establish it by strict proof in many cases. In *ex-parte* cases 10 per cent. of the recorded area was deducted to meet the difference resulting from different systems of measurement; in compromise cases, however, the officers, as a rule, allowed the parties to compromise, deducting 5 per cent. of the recorded area. In the Tengar (laterite) area of the Madhapur jungle a deduction of 10 per cent. was insisted on in all cases.

15. **Compromise cases.**—The compromise cases were disposed of with no little care, for tenants, as a rule, were illiterate. The terms of compromise were generally settled by the Revenue Officers themselves. No compromise was accepted if the scale of enhancement appeared too high, though within legal limits. The Dewans of Haibatnagar, who had made no enhancements for the last 30 years, filed compromise petitions enhancing the rent by Rs. 0-5-6 per rupee. The compromise petitions were rejected, as the rates agreed upon were considered too high and inequitable, and fair rents settled at enhancements varying from 2 annas to 4 annas per rupee. Three test appeals were filed against the orders of the Revenue Officers, and the Judge refused to go behind the compromise. Where the parties settled their own terms, no compromise was accepted, unless one tenant representing each *khatiyān* appeared in person before the Court and gave his assent. This extra precaution was found necessary in view of want of proper care on the part of the Muktears and Pleaders, who used to sign the compromise petitions without knowing their hundreds of clients and without going into the details of their cases.

16. Analysis of cases disposed of under Section 105—

Total number of tenancies disposed of during the year.	Withdrawn or dismissed without trial.	Existing rent settled as fair.	Compromised.	Decreed after contest.	Decreed <i>ex-parte</i> .	Dismissed after trial.	Pending.
75,334	9,198	340	42,715	12,880	8,646	1,523	32

Thirty-two cases could not be taken up by the Revenue Officers pending the decision of some 106 cases transferred to the Civil Courts. The number of cases in column 2 is indeed very heavy, but the management of the Bhawal Estate was responsible for the majority of these withdrawals and dismissals.

17. **Mokarari claims.**—Claims to *mokarari* rights generally failed in big estates; in a few stray cases the tenants succeeded, as the landlords could not produce the proof necessary to rebut the presumption raised under Section 50.

18. **Prevailing rate.**—Enhancement under this head was very little, and the point was not pressed. It is very difficult to prove the prevailing rate of rent, excepting under Section 31A., which has no application in Dacca. It was only in the case of the Portuguese Mission Estate that the point was pressed, and it succeeded. In these particular cases the Mission used to collect at rates varying from 4 annas to 8 annas, while all the adjoining lands were invariably assessed at Re. 1-2 to Rs. 2 per bigha. Even in the riparian area of Tippera, where Section 31A. is in force, no attempt was made by the landlord to take advantage of this new section, partly because of the fact that the rates were nearly uniform, and it was not worth the trouble of collecting data to prove the requirements of this section, and partly because the ground of rise in prices was a more sure and incontrovertible ground.

19. **Rise in prices.**—Figures were compiled from the gazettes of the years 1886 to 1915, and charts were then prepared showing the ratio of increase in each sub-division. The maximum enhancement allowable on this head

varied from 4 annas to 4 annas 6 pies per rupee according to different subdivisions. The Revenue Court took judicial notice of these figures. But, excepting in cases where the rate of rent was less than Re. 1 per acre, no enhancement was allowed at 4 annas or more. The enhancement generally varied from 1 anna to 2 annas 6 pies per rupee. In special cases it was allowed to go up to 3 annas or so. But it was very difficult to convince the Special Judge why maximum enhancements were not allowed in all cases. In no case were the rates reduced on appeal; in many cases the rates were enhanced.

20. **Deterioration.**—Though no *rāiyats* applied for reduction of rent on the ground of deterioration of the soil, they generally opposed the landlords' claim of enhancement on this plea as a set-off. They could not, however, prove a case of permanent deterioration, even in the case of lands affected by the great earthquake of 1897, which caused depression in the level of the ground and turned *āman* land into *boro* land. Though *boro* paddy is cheaper than *āman*, the outturn of the former crop is out of all proportion to that of the latter, so the tenants generally profited by this earthquake. The most interesting of these claims of deterioration was the plea put forth by the Bhāwal tenants near Pubāil—that their soil had undergone permanent deterioration on account of the rice blight known as *ufrā*. The evidence of agricultural experts proved that it was a temporary plant disease, and did not affect the soil in any way. Mr. Hart, the then Collector of the district, who took more than an ordinary interest in these cases, both as the District Officer and as the late Director of Agriculture, was the principal witness to be examined on behalf of the Bhāwal tenants. Though no permanent deterioration could be proved in these cases of *ufrā*, no enhancement was allowed on the ground of rise in prices as a rule, for the land would not be able to stand it. In certain special cases an enhancement at 3 pies per bigha was allowed in these *ufrā*-infected areas.

21. **Excess area.**—In the contested cases for additional rent for additional area the main contest was over the standard of measurement. The principle underlying Section 52 is that there must really be an excess over the boundaries originally let out. It presupposes that the original area was settled with reference to a *bonâ fide* survey, and that a subsequent survey by the same standard under the same conditions would reveal a surplus for which the tenant is liable to pay additional rent. The tests are (1) positive proof of previous survey, how it was made, and by what standard; (2) quantity of land at the inception of the tenancy and at the final publication of the record-of-rights; (3) that rent was settled with reference to area, and was not a consolidated rent. The previous measurement and the rate of rent being admitted in most cases, the contest was usually confined to the standard of measurement. The most important of these cases were those filed by Raja Jagat Kishore Choudhury of Muktagāchā against his tenants of Saralāband, Rāmnaḡar, etc., in Tappe Kurikhāi in *thānā* Rāipurā, where the relations between the landlord and his tenants were very strained and there had been no payment of rent for a very long time. The Revenue Officer accepted the tenants' version about the standard pole, and the Special Judge on appeal confirmed the finding of the court below. The Raja has appealed to the High Court, and the appeal is still pending.

Whenever excess area was found, a deduction of 5 per cent. to 10 per cent. of the total area according to the record-of-right was made, because of the difference between the two systems of measurement, the previous survey being made by the pole and the present one made scientifically with survey instruments. The Cadastral map is very close and includes *āils*, while the previous survey was not so and excluded the *āil* or the ridges between the plots. It was therefore considered advisable to allow a deduction of 5 per cent. to 10 per cent. as the circumstances of each case demanded.

22. **Special Judge's view.**—But the Special Judge on appeal generally reduced this allowance to 2 per cent. for the reasons given below. The Special Judge (Mr. Smither) writes in one case:—"The Revenue Officer says that, as the recent Cadastral survey measurements are more exact than the previous measurements made by the *zeminḡārs*, a deduction of 10 per cent. must be made from the area found in Cadastral survey before calculating the area of excess land now held by the tenants. The reasons for this are not

clear. If the measurements by the *zemindārs* were erroneous only on account of *bonâ fide* mistakes, then the probability is that some errors would be in one direction and the others in the other, and there would not be any substantial balance either way. If the *zemindārs* under the influence of their own interests were more likely to pass over an error which went against the tenants than an error prejudicial to themselves, then the probability is that the balance of error was in the direction of showing areas greater than they really were. The greater the area shown by the measurement, the more the rent. But if, owing to such error, those measurement figures exaggerated the area, then, in order to make a true comparison of the real areas with the real areas now, the figures of the present measurement should rather be added to than reduced. In the case XIV C. L. J., page 146, an error of 8 per cent. was admitted. In this case there is no such admission, nor is there anything to prove any such error. If it was stated, and not questioned, that the landlord's measurement excluded the ridges between the fields, while the Cadastral Survey measurements include them, for this some allowance must be made, but I do not think the ridges occupy more than two per cent. of the land."

23. **Clause 5 of Section 52.**—In *parganā* Bhawal the lands were classified into as many as ten to sixteen different classes with different rates of rent, one class hardly distinguishable from the other. There were few *khatiyāns*, the lands of which, according to the landlord's papers, were not divided into five or six classes. It is of course impossible for the landlord or the tenant to point out which class of land in the tenancy had increased or decreased, and by what amount; consequently, in every *khatiyān*, the average rate of rent for the particular holding had to be worked out on the lines laid down in Clause 5 of Section 52 of the Act.

Bhiti (homestead) areas in *zemindāri* papers were considerably smaller than *bhiti* areas in Settlement records. This was due to the fact that in *zemindāri* measurements that small parcel of land was classed as *bhiti* which contained the tenants' houses. In the Cadastral survey, on the other hand, *bhiti* contained other additional lands, e.g., tanks, ditches, orchards, etc., attached to the homesteads. *Bhiti* rate was generally higher than the *nāl* rate. In many cases a Cadastral *bhiti* was three or four times the area of a *zemindāri bhiti*, and the tenants questioned the accuracy of the *bhiti* area, and re-measurements had to be made in some contested cases, and excess areas assessed at *nāl* rates.

24. **Application by Co-sharers.**—Though in the adjoining district of Mymensingh many co-sharer landlords who were realising their share of rent separately filed applications under Section 105, taking their stand on the recent High Court ruling that separate tenancies had been created in such cases, no co-sharer landlord in Dacca relied on this ruling. If the existence of a registered *kabuliyat* in favour of a co-sharer removes him from the category of a joint landlord within the meaning of Section 188, it is not clear why a co-sharer collecting his share of rent separately on the basis of an oral agreement cannot file an application under Section 105. I do not really see wherein the material difference lies. The decision of Mr. Justice Chatterjee in the matter of Sharifattannessa Khātun *vs.* Saferuddin, reported in 21 C. W. N., page 595, though confirmed in the Letters Patent Appeal, has not yet been accepted as the law of the land. It is indeed a legal paradox that a co-sharer landlord cannot institute a suit under Section 30 for enhancement, but can apply under Section 105, because the latter section refers only to "land," and not to a holding, "and as such does not require that the subject-matter of the application must be an entire parcel or parcels of land."

25. **Defect of Party.**—Similarly, Dacca landlords did not proceed with any contested application if it transpired that the defendants named in the plaint were dead before the filing of the application. They could not be persuaded to take the view that an application under Section 105 was not a suit and, as such, not covered by all the provisions of the Civil Procedure Code. The tenants, as a rule, raised objections to the effect that those who ought to have been made parties were not joined in the application, e.g., daughters, wives, cousins, etc., of the parties who, under the Mahammadan law of succession, were entitled to a share, but were ignored in the settlement *khatiyāns* because they had no possession. In such cases the entries in the record-of-rights

were generally accepted as the basis of the plaintiff's claim with regard to proper parties. Questions of title were not ordinarily allowed in deciding this point. As regards the appointment of guardian *ad litem* of minor defendants, Revenue Officers experienced great difficulties and inconvenience. As no person could without his consent be appointed guardian of the minor, and as the proposed guardian did not, as a rule, appear, in order to harass the plaintiff, it was found necessary to appoint the camp Peshkars as the Court guardians if the plaintiff did not agree to withdraw. But these court guardians could do nothing.

This business of appointment of Court guardian was found to be very troublesome, and I venture to think that if a Section 105 proceeding be not in all respects a regular civil suit, like a case under Section 106, but a mere revenue application, like a Partition or Land Registration proceeding, it is desirable to consider if means cannot be adopted for simplifying the procedure as regards this business of appointment of guardian.

26. Enhancements within 15 years.—Another interesting point of law, *viz.*, whether Section 37 controls Section 105, arose in connection with the Bhawal cases. In Bhawal certain rates were enhanced in 1903, and applications under Section 105 were filed again in 1915, claiming an enhancement of rates. The landlords contended that the cases were maintainable, but the rent settled should be given currency from 1918. The tenants contended that cases should have been summarily rejected, inasmuch as they were filed within 15 years of the last enhancement, contravening the provisions of Section 37. The question was discussed at length by the superior Revenue authorities and the Legal Remembrancer, and we were instructed to proceed with the cases and to decree the fair rent from after the expiry of 15 years from the date of the last enhancement. In view of the doubtful nature of the issue raised, the parties compromised their claim in most cases, agreeing to an enhancement of 1 anna per rupee. The Special Judge (Mr. Smither) observed that Section 37 controlled Section 105. While he enhanced the rate of enhancement in certain cases, he dismissed the appeal in respect of other *khatiyāns*, saying "The tenants have not appealed, and I therefore do not set aside the enhancements already allowed in these cases." He held that Clause 4 of Section 105 made Section 37 applicable. I have no intention of dragging on the old controversy, but it is doubtful if the fair rents settled can be given effect to under Section 110 from the 16th year, and not from the beginning of the next agricultural year. It should be noted that in these cases as well as in many others tenants not being bound by any *kabuliyat* do not come within the second proviso to Section 110. I understand that similar cases have been rejected in Midnapore.

27. Suggested amplification of statutory rules.—I venture to suggest that the statutory rules under the Bengal Tenancy Act should be revised at the first opportunity, so as to cover the following doubtful points discussed by me, so that the parties may all know exactly what the correct position is—

- (1) Principles about decreeing costs in 105 cases.
- (2) Issue of notices on absent defendants per registered post.
- (3) Scale of allowance to reconcile the different systems of Survey.
- (4) Application by a co-sharer landlord collecting his share of rent separately with or without a *kabuliyat*.
- (5) Applications against dead persons recorded in the finally published *khatiyāns*.
- (6) Appointment of Court guardians.
- (7) Applications within 15 years of the last enhancement in case of *rāiyats* not bound by any *kabuliyāt*.

28. Result of Section 105 cases.—I have shown below the result of settlement of fair rent in those cases in which the applications were allowed whether on compromise or contest :—

Number of tenants.	Old rent.	New rent.	Increase in amount.	Percentage.	Increase in area.	Percentage.
64,060	409,471	512,095	102,624	24.9	53,702	13

Increase under Section 30(a).		Increase under Section 30(b).	
Amount.	Percentage.	Amount.	Percentage.
2,491	7	46,431	11·2

Thus it would appear that more than half of the increase was due to excess areas, so the real enhancement worked out to less than 12 per cent. on all heads, i.e., less than 2 annas per rupee of old rent. Of course, some big landlords resented the smallness of increase. The late Colonel Hodding, Manager, Nawab's Estate, proposed to file 3,000 cases in Tippera, but did not file any, for he thought that by coming to the Revenue Court he did not gain in the matter of rate, but, instead, lost 5 per cent. to 10 per cent. of the recorded area. But this is a mistake, for the rents in the Nawab's Estate are already pitched at a very high rate, and no Revenue Officer can think of allowing any enhancement beyond 2 annas over rates varying from Rs. 4-8 to Rs. 5 per acre. In Raipura thānā Khan Bahadur Kazi Alauddin filed applications for enhancement of rents, already ranging from Rs. 4-5 to Rs. 8-5 per acre, the prevailing rates ranging from Rs. 4-8 to Rs. 5-12 per acre. The history of these cases showed that the existing rents themselves were illegal and were arrived at by violent means. The applications were rejected, and there was a proposal for moving Government to initiate proceedings under Section 112 in this area, but, as an appeal was filed before the Special Judge, no recommendation could be officially sent up on the subject pending the disposal of the appeal. The landlord in the Appellate Court, however, did not press his point about the rate and compromised with the tenants at the old rates, getting full assessment of the excess area, and it is believed that this talk of the application of Section 112 had a salutary effect on the landlord who hastened to come to terms with his hitherto-despised tenantry.

I have noted below the results of the appeals preferred before the Special Judge against orders in Section 105 cases :—

Number of appeals	...	...	...	387
Pending	...	...	...	1
Appeal dismissed	...	...	...	307
Remanded	...	...	...	22
Withdrawn	...	...	...	2
Modified	...	...	...	55

While in other districts Munsiffs were employed in numbers to dispose of these cases, not a single Munsiff had to be requisitioned in Dacca for the disposal of applications under Section 105, nor even for regular suits under Section 106 : and the general result of these cases, coupled with the result of appeals, confirms my conviction that Executive Officers specially trained in settlement are better fitted to do real justice to these cases than Judicial Officers with a short training in settlement. While the latter yield to the "accommodating resentment of the Pleaders," the former do "consider the passionate interest of the tenants whose profits are in danger."

Completion of Diara and Jamabandi.

29. The diara proceedings of the Tippera riparian area were completed and submitted to the Board of Revenue and necessary orders were obtained. Rent rolls of two more estates were prepared and confirmed. The mauzas affected by these proceedings were printed and the records finally published. Two proceedings were drawn up by the Board under Section 104 G. (2) for revising the rent rolls of estates already confirmed. In one case (Estate No. 10843), the necessity for revising the rent roll arose out of the inclusion of certain lands in the temporarily-settled estate in pursuance of a decree of the High Court, adding some land to the estate. In the other case, the tenants of Tippera Estate No. 2050 moved against the rates of rent adopted by the Settlement Department. The Board, after a full consideration of the case, upheld the rates as being fair and equitable.

Drawing Section.

30. The remaining 16 " sheets of Tippera *diara* and the other Dacca *mauza* affected by the diara resumptions were completed, together with the pending topographical maps. The *diara* volumes were completed and the boundary mark registers and *mujmities* were prepared and made over to the Collector.

Making over the records to the Collectorate.

31. There was some delay in handing over the records to the Collector, as he was not ready with his Record Room. It was decided that the old Settlement Office should be rented by the Collector for the purpose, and Government sanctioned money for the improvement of this building. The Collector wanted to make use of the Settlement Press building for this purpose. This led to some delay, but at last the old Settlement Office was converted into the new Record Room. Then followed the business of making over the records with all its tedious checks and counter-checks. I have noted below the quantity of records deposited :—

		Running ft.
(1) Record-of-rights in bound volumes,	19,724 volumes, occupying ...	2,035
(2) Maps in bound volumes	... 146	188
(3) Mauza bundles, Statistical Register,		
objections under Section 103 A. ...	1,052	220
(4) Case records	... 260,092 files occupying	594
(5) Saleable <i>khatiyāns</i>	... 6,582,048	1,652
Plot Index	... 27,570	
(6) Saleable maps	... 317,152	136
	TOTAL	4,825

Besides these records, which occupied 4,825 running feet of space on the shelves, copies of *khatiyāns* were kept in 130 big packing cases for the problematic maintenance of records. Copies of the records and maps deposited are being issued by the Collectorate, and the sale-proceeds for the last two financial years amounted to Rs. 23,738.

A Retrospect.

32. I set my foot on the soil of Dacca in 1908, and I left it in 1918. It is worthwhile comparing the figures of criminal cases and civil litigation of these two years to find out if the district has profited by the Settlement operations—

Criminal.

	1908.	1918.
Rioting	67	33
Murder	16	11
Wrongful Confinement	72	51
Criminal Trespass	176	127
Possession disputes (Section 145, C. P. C., etc.)	193	28

Civil.

Rent suits	7,402	14,092
Title suits	5,079	4,583

While criminal cases have decidedly declined, the number of rent suits naturally doubled. The landlord now knows his tenant and his rent as authoritatively recorded and settled, and there is no longer any apprehension of the denial of the relationship of landlord and tenant. While in other districts the Settlement operations entailed an increase in the number of title suits in Dacca, the position is the reverse. There is a decline in this direction also, presumably because the contesting parties have in most cases accepted the records as final.

Financial Results.

33. The financial analysis given in Chapter VIII of Mr. Ascoli's report was only approximate, as it was based partly on actual and partly on an estimated statement of receipts and expenditure. The figures as actually verified by the Accountant-General stand thus—

Expenditure.			According to revised estimate of 1914-15.	Actual, as verified by Accountant- General, Bengal.
			Rs.	Rs.
Cadastral Survey and Settlement (including traverse) ... ..	...	...	28,01,292	27,03,127
Receipts from stamps, sale of stocks, etc. ...	...	...	2,88,447	3,46,286
Net expenditure ... ..	...	...	25,12,845	23,56,841
The original abortive traverse ... ..	...	...	...	97,516
TOTAL ... ..	...	...	...	24,54,357

Thus it would appear that the Settlement Department effected a saving of about 1½ lakhs of rupees on the net expenditure.

If we do not deduct the receipts on stamps, etc., the gross expenditure was Rs. 27,03,127, or at Rs. 856 per square mile, against Rs. 862, as estimated by Mr. Ascoli, and against Rs. 1,070, the actual cost in Faridpur Settlement. So the actual saving compared with Faridpur was Rs. 214 per square mile.

Of the net expenditure, Rs. 23,56,841, the cost of the Dacca town survey, amounting to Rs. 19,839, is debitable to Provincial Revenues. The apportionment of dues stands thus—

	Payable by Government of India.		Private parties, including Local Government.		Provincial Government.	TOTAL.
	Rs.		Rs.		Rs.	Rs.
Net expenditure ...	5,84,250		17,52,752		19,839	23,56,841
Abortive traverse ...	24,379		...		73,137	97,516
TOTAL ...	6,08,629		17,52,752		92,976	24,54,357

* Cost of survey of Dacca Town.

34. **Causes of excess recovery.**—In addition to the sum of Rs. 20,000 deposited for maintenance of boundary marks under Section 114 (2) of the Act, the actual recovery from private parties as verified by the Accountant-General came up to Rs. 22,14,704, or Rs. 4,61,952 in excess.

It is perhaps necessary to explain in detail the causes of this big surplus. The causes are twofold—

First.—When the apportionment proposals were submitted to Government on the basis of Mr. Kerr's estimates, it was not anticipated that we would be able to effect an actual saving of 2 lakhs of rupees on the net settlement expenditure.

Secondly.—The outbreak of the European war, bringing in its train a sudden financial crisis, made the success of our recovery work in general, as already described, very problematic. It was accordingly decided to assess every demand under Rs. 10

in multiples of 4 annas and demands exceeding Rs. 10 in multiples of rupees. As there was about 14 lakhs of *khatiyāns* to be paid for, we hoped to raise close upon 3 lakhs of rupees by this means to meet the apprehended deficit of a like amount resulting from the threatened collapse of our recovery programme. But the unprecedented success of the recovery work, contrary to all expectations, absolutely changed our financial position, and this saving of 2 lakhs from the net expenditure only added to our surplus, a surplus which thus came to us not through any culpable mistake in computation, but as the result of rigid economy, good management and a little speculation in war times, which, under the peculiar circumstances of the case, could not have been possibly avoided.

Conclusion.

35. It now remains for me to express my gratitude to my old chief, Mr. Ascoli; though not connected with the department, he always helped me with his counsel and guidance, and he informally inspected his old settlement once in 1917. In Dacca was tried the first experiment of running a major operation without a covenanted officer at its final stages, and if the experiment did not fail, it was because his wonderful organisation was a valued legacy to me. The thanks of the department are due to Mr. Hart for the patronage he extended to the Settlement staff in filling up vacancies in his own office. All my Jamabandi Amins were made his Khas Tahsildars. Five Assistants of the Settlement Office were given important posts in the Collectorate, including a Salt Sub-Inspectorship. Babu Bhupati Mohan Bose, our Sheristadar, was appointed Record-keeper of the Collectorate. I am personally indebted to Mr. F. W. Robertson, the then Additional Collector of Dacca, for the kind help he accorded to me during his tenure of office.

I take this opportunity of tendering my sincere apologies to the Hon'ble Mr. M. C. McAlpin, the Head of the Department, for trouble I gave him with the difficulties which confronted me and all my Assistant Settlement Officers. I preferred to have some of the really doubtful legal points and principles authoritatively settled by the superior Revenue authorities with the aid of the Crown lawyers instead of leaving them to be decided by the individual Assistant Settlement Officers camping in the interior without any disinterested legal help, and my grateful thanks are due to him for the patience with which he disposed of my references. I am much indebted to him for his instructive inspections twice a year.

I cannot close my report without recording my appreciation of the services rendered by Babu Pramatha Nath Dutta, Sub-Deputy Collector and Assistant Settlement Officer, who was left in charge in 1918, when I had to go to Tippera-Noakhali Settlement. The real work of winding up and making over fell on him, and he worked in such a way as to defy all criticism and to inspire praise, and I fervently hope that his good work will be suitably recognised by Government at an early date.

APPENDIX.

A note on Section 40, Bengal Tenancy Act.

1. Under Section 40, Bengal Tenancy Act, an occupancy *rāiyat* can produce rent can apply for commutation of his produce rent into cash rent. Clause 5 of the section provides for appeal to the Revenue authorities, but the section does not provide for any suit in the Civil Courts whereby the decision of the Revenue Courts is liable to be contested or set aside, nor is there any section in the body of the Act authorising the Civil Courts to go into this question at all. As cases under Section 40 are very few, the case law on the point is very meagre and conflicting in essence. The first reported case on Section 40 is reported in 3 C. W. N., page 311. In this case one Mahanta of a Matha in the district of Shahabad applied for the commutation of his produce rent payable to his landlord. The commutation was allowed by the Collector, but the Commissioner on appeal set aside his order, holding that the Mahanta was not a *rāiyat*, and as such he could not apply under Section 40, Bengal Tenancy Act. The Mahanta then brought in a suit under Section 42 of the Specific Relief Act for the declaration of his title to apply under Section 40. The Sub-Judge of Shahabad gave the plaintiff the relief prayed for, and the District Judge on appeal held as follows :—

"I am of opinion that, whether the plaintiff be a tenant of the land in suit in his own right, or holds it as trustee for the Matha or Idol, he is entitled to apply, under Section 40 of the Bengal Tenancy Act, to a commutation of the rent in kind, and the Lower Court has rightly given the Plaintiff-Respondent a decree declaring his rights." But the High Court in second appeal ruled as follows :—

"The decree which has been given is, in our opinion, one which a Civil Court is not competent to give. The effect of the decision of the Lower Appellate Court would be to place in the hands of the Civil Courts not only the power of determining beforehand the way in which the Revenue Court ought to give its decision, but also to make the Civil Court practically an Appellate Court from the decision of the Revenue Court. That is certainly not what the Legislature intended."

2. In Bakarganj, after the Final Publication of the Record-of-rights, an officer was specially authorised and deputed by the Local Government for entertaining and dealing with applications under Section 40, and a large number of commutations was allowed. But when one of the landlords brought in a rent suit against the tenant for produce rent, and the tenant denied his liability for delivering produce rent and offered commuted rent, the Munsif who tried the case gave the landlords a decree for produce rent. The District Judge, on appeal, however, gave a decree for commuted rent only. The High Court, on second appeal (which was allowed), reversed the order of the District Judge and held as follows :—

"It may be conceded that the propriety of commutation or of the amount fixed cannot be called in question in a Civil Court. But it is plain that a proceeding under Section 40 is founded on the assumption that the tenant whose rent is subject to be commuted is an occupancy *rāiyat*. The Legislature could never have intended that a dispute as to status of the tenant should be finally decided by the Revenue authorities in a commutation proceeding under Section 40, and should thereafter be conclusive between the parties in the Civil Court. In the case before us (Mukherji and Richardson), as it has been established that the defendants are under-*rāiyats*, no order of commutation could have been made under Section 40. The order made by the Revenue Court was consequently without jurisdiction." (Kali Krishna Biswas *versus* Ram Chandra Baidya, XIX C. W. N., 823).

3. After another commutation order passed by the same special officer in Bakarganj after the Final Publication of the Record-of-rights, Durga Mohan Ganguly and other brought in a suit for produce rent against their tenants, Sukumar Das and others. The Munsif, the Sub-Judge and the High Court presided over by one Judge (Mr. Justice Ray) dismissed the plaintiff's claim of produce rent and treated the matter as concluded by the decision of the Revenue Court, and on that ground upheld the defendant's plea, but in the Letters Patent Appeal the Chief Justice held as follows :—

"Plaintiffs take exception to the commutation proceedings or at any rate to their finality, for he says (?), under Section 40, there can be no commutation, unless the tenant is an occupancy *rāiyat*."

The plaintiffs say that this question must be decided in this (Rent) suit, and that it is open to the Civil Court to question the jurisdiction of the Revenue authorities. The judgment of the Munsif as also of the Subordinate Judge and of Mr. Justice Ray are all against the plaintiff. The judgment of the Munsif is to the effect that the tenant was an occupancy *rāiyat*, and that the rent was payable in kind, so that the learned judge affirmed the competence of the Revenue Court proceedings. The other two courts, however, did not follow the procedure, but treated the matter as concluded by the decision of the Revenue Court, and on that ground have upheld the defendant's plea. I do not wish to say that there is nothing to be said in support of that view. But whether it be right or whether it be wrong, I consider we are bound by the decision of an Appellate Bench of this court in Kali Krishna Biswas *versus* Ram Chandra Baidya (XIX C. W. N., 823), which directly decides the point in discussion before us and determines that Civil Courts can

consider the competence of the Revenue Courts in commutation proceedings where a suit is brought for recovery of arrears of rent as determined by these proceedings. I therefore accept that decision as binding on me. In view of that decision it is manifest that the judgment of Mr. Justice Hari Nath Ray cannot stand, nor can that of the Lower Appellate Court"—(XIX C. W. N., 825).

4. So it would appear that it is open to a landlord to question the validity of a commutation proceeding by raising a dispute as to the status of the tenants in a rent suit. The position appears to be very uncertain. These Bakarganj commutation cases were decided after the Final Publication of the Record-of-rights with all the presumptions arising out of the records, in which each of the applicants was recorded as an occupancy *rāiyat*. No suit was instituted under Section 106 for the correction of the record-of-rights. No objection was raised before the Commutation Officer about the status of the tenants as the Commutation Officer has informed me. But the question was allowed to be raised in a rent suit, and decided adversely. If the finding of the Revenue Court in a commutation proceeding is liable to be set aside incidentally in a rent suit without a regular title suit, position would be very insecure, and the law would be inoperative. For a tenant will have to go to the Civil Court first for the declaration of his status before he can apply under Section 40. I had a large number of commutation cases in my file; in all of them the landlords set up a defence that the applicants are not tenants but hired labourers, and in some cases they claimed *khamar* right and declared the applicants as non-occupancy *rāiyats*. Commutation was allowed in most cases after a thorough local enquiry. Now it will be competent for each landlord, under the present ruling, to claim produce rent again in a rent suit characterising my commutation orders as being *ultra vires* and bad in law, for he disputed the status of a applicant and I had no jurisdiction to decide the dispute with finality. Now, will it be possible for the Civil Court to go into the question of *khamar* right under Chapter XI, Bengal Tenancy Act, in an ordinary rent suit? Or will it be possible for the court in a rent suit to decide with finality the issue whether the applicant is a hired labourer or a tenant? A title suit would always lie against such findings in a rent suit. Of course it will be always possible to go into complicated questions of status in a regular title suit, but never in a rent suit; nor is it desirable that the finding of a Revenue Court, which, as a rule, is arrived at after a thorough local enquiry, should be liable to be contested and set aside in a rent suit in which proceedings are more or less of a summary nature and particularly because the finding of the court in a rent suit is again liable to be set aside in a title suit in some cases.

5. Then, again, to allow the validity of a commutation order to be so challenged in a rent suit is to put the tenant at the mercy of the landlord and to encourage the latter to refuse commuted rent. No order of a Criminal Court or of a Revenue Court can be contested in a summary proceeding before the Civil Court without a regular title suit. No order under the Land Registration Act, Estate Partition Act, etc., can be contested, even when it is allowed, without a regular suit. It is not clear why this should be allowed in case of an order under Section 40, Bengal Tenancy Act. If it is not desirable to allow absolute finality to a decision of the Revenue Court in this matter, some reasonable finality should certainly be conceded to it. It is not certainly desirable to allow the landlords and the tenants to be in an unsettled state for over three years, and then to allow the former to call in question the validity of the commutation order, perhaps not before receiving suit full three years' commuted rent in part satisfaction of his claim of produce rent.

6. In the Shahabad case, reported in 3 C. W. N., the Revenue authorities refused commutation, holding that the applicant was not a *rāiyat*. The Civil Courts did not consider themselves competent to interfere, though they held that the applicant was a *rāiyat*. In the first Bakarganj case, however, the High Court held that the Civil Court could interfere, as the decision of the Revenue authorities in the matter of status was not intended by the Legislature to be final. In the second Bakarganj case, Mr. Justice Ray followed the Shahabad case. Though in the Letters Patent Appeal the Chief Justice followed the ruling in the first Bakarganj case, the language used by his lordship clearly indicates that the point was a very doubtful one. The real point at issue is not any point of law embodied in the Act, but the interpretation of the actual intention of the Legislature in absence of any express provision of law one way or the other on the point. I have carefully gone through the history of legislation on this point and studied the proceedings of the Legislative Councils as published in the India Gazette. It does not appear to me that there was any intention of vesting the Civil Court with the power of revising the proceedings of the Revenue Courts.

But as there is a substantial difference between the interpretations of the intention of the Legislature by the Judges of the High Court at different times and as the subject is of vital importance to agricultural Bengal, and as the learned Chief Justice dissenting from Mr. Justice Ray and in following the ruling of Mr. Justice Mukherji has spoken in uncertain tone about the wisdom of allowing the Civil Courts to interfere with and sit in judgment over finding of the Revenue Courts, it is desirable that the Legislature should intervene and explain its own intention and define and determine the nature of interference, if any, allowable.

KALIPADA MAITRA,

Assistant Settlement Officer, Dacca.

The 4th July 1915.

Department of Land Records, Bengal.

No. 2296, dated Calcutta, the 12th February 1916.

From—The Director of the Department of Land Records, Bengal,
To—The Settlement Officer, Dacca.

With reference to your letter No. 1430, dated the 1st February 1916, forwarding a *kabuliyat* in a commutation case, I have the honour to say that it appears that the lease is an obvious attempt to defeat the law by a prevarication of the facts. The said labourer, and not the lessor, is the man in the use and occupation of the land immediately. He does everything in connection with the land, supplies all the materials of husbandry, supervision and labour. He must therefore be recognised as a tenant. The attempt to bar the acquisition of occupancy right is in contravention of Section 178 (1) (a) of the Bengal Tenancy Act. Under these circumstances it does not seem to be necessary to consult the Legal Remembrancer.

2. The *kabuliyat* is herewith returned.

Commutation Appeal Nos. 22 to 29.

Rajani Kamal Chakraverty and another, Pukan	...	Appellants.
Dino Nath Sil and others	... ...	Respondents.

Section 40 (5), Bengal Tenancy Act.

Judgment.

Eight appeals have been preferred against the order of the learned Assistant Settlement Officer, granting commutation of produce rent to certain tenants of the Appellants. The original cases were heard together, and the appeals have been heard together, the same question being in issue in all cases.

All the grounds urged in appeal have already been heard and considered by the learned Assistant Settlement Officer. They are—

- (1) That the land which the Respondents occupy is *khamar* land of the Appellants, and, as such, the Respondents can acquire no right of occupancy in them. Hence the order under Section 40, Bengal Tenancy Act, is bad.
- (2) (Failing this plea) that the respondents are mere labourers of the Appellants and the relationship of landlord and tenant does not at all exist.
- (3) The order granting commutation will cause great hardship to the Appellants.

These questions have been discussed at length by the learned Assistant Settlement Officer, and I have little more to add. The principal plea urged is the plea of *khamar*, and the following is the evidence adduced in support of it:—

(1) Recital in *kabuliyats* executed by the Respondents themselves or their predecessors in interest. These *kabuliyats* are executed at various times from 1306 to 1318 B. S. In these *kabuliyats* the land is indicated as the *khamar* of the Malik, which had long been preserved for their own use, and it is further laid down that the permission of the Malik must be taken as to what crop is to be grown before any crop is sown.

(2) Rent receipts for the Malik's share of the produce of these very lands, which are described as *khamar*.

(3) In the Malik's Road Cess Return of 1308 B.S. the lands are entered as Malik's lands.

(4) In the Partition Chitta of 1888 the lands are entered as Malik's Jote.

(5) Certain statements of the Respondents themselves in cross examination to the effect that the land was originally *khamar*. Now the question of what evidence is admissible to prove that lands are the *khamar* lands of the proprietors has been very clearly laid down in the matter of Ganpat Mehtar vs. Rehal Singh (XX C. D. of P 14), in which it was held that evidence of letting subsequent to 2nd March 1883 was not admissible to prove the character of the land.

The recital in the *kabuliyats* and the rent receipts therefore go.

The entries in the Road Cess Return must, I think, be considered to be an admission of the Malik (in his reference), and as such is admissible, while the entries in the Partition Chitta of 1888, i.e., previous to the passing of the new Act, cannot be held to be binding on the tenant.

There is a very strong presumption against any claim of *khamar* (and this presumption is strengthened by the fact) that the lands have been recorded in the Settlement record as Jote lands.

The admission of Dino, one of the Respondents, that the land was originally the *khamar* of the Malik cannot be taken very seriously, for among cultivators, and even among educated people also, the term *khamar* is loosely used to denote lands in the *khas* possession of the Malik.

I am of opinion that the Appellants have failed to rebut their presumption.

(2) There is no satisfactory evidence that the respondents are merely the hired labourers of the Appellants. The fact that *kabuliyats* were executed is some evidence of

the fact that the relationship of landlord and tenant existed, and the presumption created by the entry in the record-of-rights remain un rebutted.

(3) There is no evidence at all of hardship, at least hardship as is contemplated on a ground for refusing an application for commutation. It would appear that the Appellants are *zemindārs*, by no means depending on the produce rent for their means of livelihood.

The calculation by which the learned Assistant Settlement Officer arrived at his award has not been questioned. They would appear to be in accordance with the rule laid down by Government.

It is finally urged, on behalf of the Appellants, that they have paid Settlement costs on the basis of the value of the produce rent. This is a matter between the Appellants and the Settlement authorities, and is not a question into which I can enter here.

The appeal is dismissed.

F. W. ROBERTSON,

Additional Collector.

The 17th March 1917.

Cases Nos. 39—46 of 1917-18.

COMMISSIONER'S COURT.

Dated Dacca, the 9th July 1917.

Present :—F. C. French, Esq. *Commissioner.*

Appeal from the order of the Collector of Dacca.

Dated 27th March 1917 in the matter of commutation of produce rent into money rent under Section 40 of the Bengal Tenancy Act.

Rajani Kamal Chakraverty *Appellant*

versus

30, Pukon, 40, Dina Nath Sil, 41, Khodah Newas, 42, Shekh Tokani, 43, Azizulla, 44, Panjatannessa Bibi and others, 45, Hari Charan Dhupi, 46, Panjatannessa Bibi and others *Respondents.*

For Appellant:— { Rai Sasanka Kumar Ghose, Bahadur ... } *Pleaders.*
 { Babu Rajani Kanta Chakraverty ... }

For Respondent:— { Babu Jogendra Nath Sen ... } *Pleaders.*
 { „ Ram Chandra Sen ... }

DECISION.

These eight appeals are heard together. The only point seriously urged on behalf of the Appellant is that the land is “the proprietor's private land” under Section 120, Bengal Tenancy Act. The Lower Appellate Court's judgment deals very carefully with this contention, and I am in agreement with its decision.

Under Section 120, Bengal Tenancy Act, the presumption is that the land is not proprietor's private land, and a further strong presumption in favour of the Respondents arises from the fact that in the recent District Settlement they were recorded as occupancy *rāiyats* without any objection at any stage of the proceedings. This (doubly) fortified presumption could only be rebutted by the production of evidence, proving beyond a shadow of doubt that the presumption is wrong, and there is certainly no evidence of such a character in these cases. The hardship to the Appellant of these commutations is mentioned, but it is not shown to be such as would justify refusal under Clause (6) of Section 40, Bengal Tenancy Act.

The appeals must be dismissed.

F. C. FRENCH,

Commissioner.

The 9th July 1917.

(Illegible.)

R. GUHA,

10th July 1917.

CIVIL REVISIONAL JURISDICTION.

Rules Nos. 552 to 558 of 1918.

N. R. Chatterjea, J.
 Panton, J.

Sheikh Fikhan, Defendant, Petitioner,
versus

Rajani Kamal Chuckerbutty, Plaintiff,
 Opposite Party.

17th February 1919.

Bhagdar, if a tenant—Status—Tenant or labourer, test of—Commutation proceedings—Small Cause Court, Jurisdiction of, competency to question the order of commutation by Revenue officer—Bengal Tenancy Act (VIII of 1885), Sections 40 and 103B.

Sheikh Pokhan *versus* Rajani Kamal Chuckerbutty.

Where a *kabuliyat* was described as one “for agricultural labour for cultivating in partnership the *khas khamar* land,” and it, *in verba*, recited: “I (*i.e.*, the executant) shall always grow paddy on the land. Every year, before growing crops, I shall ask you what kind of paddy shall have to be grown on which land, and shall grow paddy according to your desire. I shall not be able to grow any paddy according to my own will. When in due course the paddy would be ripe, I shall cut it and take it to your house for thrashing,I shall get the remaining paddy and pay as remuneration for my cultivation, seeds, looking after and labour instead of money in cash:”

Held—That no tenancy was created by this document, the executant got no interest in the land and he was only a labourer, and that a suit based upon such a document was triable by the Small Cause Court.

Held, further:—That, inasmuch as the executant was not a tenant, the order of commutation of rent of such a person by a Revenue Officer under Section 40 of the Bengal Tenancy Act on the basis of the Settlement record, which described that person as a settled *rāiyat*, was not binding on the Small Cause Court, and that the said Court was right in decreeing Plaintiff's suit for money, being the price of his share of the produce on the basis of the aforesaid *kabuliyat*.

Kali Krishna Bishwas *v.* Ram Chandra Baidya (1) and Durga Mohan Gangopadhyaya *v.* Sukumar Das (2) referred to.

This was a rule issued on 25th November 1918 against the judgment of K. K. Dutta, Esq., Small Cause Court Judge at Dacca, dated the 31st August 1918.

(1) 19 C. W. N., 823 : S. C. 21 C. L. J., 487 (1915).

(2) 19 C. W. N., 825 : S. C. 21 C. L. J., 590 (1915).

The opposite parties in this Rule instituted suits in the Court of the Munsif, 4th Court, Dacca, exercising Small Cause Court powers, for recovery of certain sums of money, being the prices of their shares of the produce under *kabuliyats* executed by the Defendants-Petitioners. In the course of the settlement proceedings the Defendants were recorded as settled *rāiyats* of the village. The Revenue Officer, in the commutation proceedings, proceeding upon the said record-of-rights, made an order for commutation of the rents under Section 40 of the Bengal Tenancy Act. The main defence to the suits was, first, that the Small Cause Court had no jurisdiction to try the suits, and, secondly, that the order of the commutation of rent by the Revenue Officer was binding on the Plaintiffs in suits in the Small Cause Court. These objections were overruled by the Small Cause Court, and the Plaintiff's suits were decreed. The Defendants thereupon moved the High Court and obtained the present rules.

The terms of the several *kabuliyats* in question were similar, and the portions of the *kabuliyats* material to this report are given below from one of the *kabuliyats* :—

“কম্বা খাস খামার জমির ভাগে চাষাবাদ করার কৃষি মজুরিগিরির কবুলিয়তপত্র মিদং কার্যধাণে তদন্তগত নিম্ন তপসিলের লিখিত এক কিতা কাত ১৮৮৮ এক কাণি পোনে নয় গণ্ডা খাস খামার জমি যাহা বহুকাল হইতে মালিকের জীবকায়ার নিমিত্ত স্বতন্ত্র ভাবে রক্ষিত আছে তাহা আমি ভাগে চাষ আবাদ করার প্রার্থনা করায় আমার প্রার্থনা মঞ্জুর করিয়াছেন সেমতে এই কবুলিয়ত লিখিয়া দিয়া অঙ্গীকার করিতেছি যে কথিত জমির সীমানা সরহদ বহাল রাখিয়া চাষাবাদ করিব, খননাদি দ্বারা কিম্বা অগ্নি কোন প্রকার ভূমির অবস্থান্তর অথবা মূল্যের হানিজনক ও উর্বরতা শক্তি হ্রাসকর কোন কার্য করিতে পারিব না। জমিতে সর্বদা ধান্য ফসল জন্মাইব, প্রতিসন ফসল জন্মাইবার পূর্বে কোন জমিতে কোন জাতিয় ধান্য উৎপন্ন করিতে হইবে তাহা আপনাদের নিকট জিজ্ঞাসা করিয়া আপনাদের ইচ্ছামত ধান্য জন্মাইব, আমার নিজ মতলব মত কোন ধান্য কিম্বা অগ্নি কোন ফসল জন্মাইতে পারিব না। যথা সময়ে ধান্য সুপরিপক্ব হইলে কর্তন করতঃ আপনাদের বাড়ীতে উঠাইয়া পাড়াই মারাই করিব এবং ষাণ্মাহ হইতে প্রচলিত ছয় সেরা কাঠার মাপে ঝাড়া সারামং ৩২ চারি আরি ধান্য ৪ চারি বোঝা কুট যাহার বর্তমান বাজার মূল্য মং ২১২ একুশ টাকা বটে) প্রতিসন পৌষ মাস মধ্যে আপনাদিগকে বুঝাইয়া দিব। অবশিষ্ট ধান্য ও কুটামার বীজ, তদবির তালাপি ও পারিশ্রমিক মূল্য স্বরূপ নগদ টাকার পরিবর্তে আমি পাইব। যথাসময়ে আপনাদিগকে ফসল বুঝাইয়া না দিলে, আইনত ক্ষতিপূরণ সহ বাজার দরমত ফসলের মূল্য আপোষে কি নালাশে আদায় করিয়া লইতে পারিবেন তাহাতে কোন ওজর আপত্তি করিতে পারিব না। যদি কখনও আপনারা নিজ হাল চাষ দ্বারা জমিতে ফসল জন্মাইতে ইচ্ছা করেন তবে বিনাপত্যে জমি ছাড়িয়া দিব, স্বয়ং উল্লেখ কোন দাবি দাওয়া করিতে পারিব না। এতদর্থে এই খামার জমির ভাগে চাষাবাদ করার কৃষি মজুরিগিরির কবুলিয়তের মর্ম্ম বৈঠক মজলীশ মধ্যে পাঠ করাওয়া ইহার মর্ম্ম সুন্দররূপ অবগত হইয়া স্বৈচ্ছায় ও সদজ্ঞানে এই দলিল সম্পাদন করিলাম।” ইতি সন ১৩১৮ সন তাং ১১ বৈশাখ।

The following is a translation of the aforesaid *kabuliyat* :—

“This is a *kabuliyat* executed for agricultural labour for cultivating in partnership the *khas khamar* land. Within the same the five *pakhis* of lands, in two plots, described

in the schedule below, have been kept separate as *khamar* for the maintenance of the Malikis for a long time, and, I praying for cultivating the same in partnership (*bhage*), you have granted my prayer. Therefore I execute this *kabuliyat* and promise that I shall cultivate the same, keeping the boundaries intact, and shall always sow paddy and no other crop in the same; every year, before paddy is sown, I shall take your permission as to which sort of paddy is to be sown in which land, and I would produce the same sort of paddy in the same land as you permit, and I shall not be able to produce any crops against your wish. When the crop will be ripe, I shall cut it and take it to your house, and strike out the paddy from the fodder stock and winnow the same, and from the winnowed paddy I shall deliver to you within the month of Pous every year ten *aris* of paddy, measured by a current *kulha* of six seers, and ten bundles of straw, present market value whereof would be Rs. 21, and I shall take the remaining paddy and pay as the remuneration for my cultivation, seeds, looking after and labour instead of money in cash. If I fail to deliver the crops to you in proper time, you will be entitled to realise the same from us with damages. I shall give up the land without any objection whenever in future you wish to have the same cultivated by other cultivators or cultivate with your own plough, and will not be able to claim the same on any plea of any title whatever. On these terms I sign and execute this document out of my own accord after the document was read out in presence of the persons assembled. Finis."

Babu Asitaranjan Ghose for the Petitioner.—The Defendants were recorded as settled *rāiyats*, and, as such, they are occupancy *rāiyats*; then, under section 40 of the Bengal Tenancy Act, the rent in kind which was payable under the *kabuliyats* was commuted to money rent; therefore the suits are not cognizable in the Small Cause Court. The *kabuliyats* executed by them are *bargā kabuliyats*; *bargāddars* or *bhag-chasis* are tenants: upon a proper construction of the *kabuliyats* the Defendants should be considered as tenants. At any rate the Small Cause Court has no jurisdiction to question the decisions arrived at by the Revenue Officer under Section 40, Bengal Tenancy Act. The Lower Court did not consider the effect of the entries in the record-of-rights.

Babu Surendra Chandra Sen (with him Babu Prakash Chandra Pakrasi) for the Opposite Party.—As to whether a person is a tenant or not depends upon the question as to whether he has any interest in the land or not; in a lease there is a transfer of interest in the land: Secretary of State for India v. Karuna Kanta Chaudhury (3); in the present case the agreement clearly shews that the Defendant had no interest in the land, firstly, the words in the document are কৃষি মজুরিগিরির কবুলিয়াত, i.e., *kabuliyat* for agricultural labour; secondly, the executants undertook to raise such kind of paddy as they would be directed, and that they were not entitled to raise crops according to their own will, etc., etc.; thirdly, that the executants would receive a certain portion of the paddy as their remuneration instead of money in cash. These and the other terms shew that they had not acquired any interest in the land. Some of the earlier decisions were to the effect that *bargāddars* were tenants, but recently the cases decided by this Court shew that *bargāddars* or *bhag-chasis* are not necessarily tenants; the earliest case on the point shews that a *bargāddār* may or may not be a tenant, and this depends upon the facts of each particular case: see Srinath Dutt v. Dyary Dhalie (4). The following cases were also cited: Secretary of State for India v. Govind Prasad (5) and Kade Mondal v. Ahadali Molla (6).

The Small Cause Court, like a regular Civil Court, is not bound by a decision of a Revenue Officer in commutation proceedings under Section 40 of the Bengal Tenancy Act: see Kali Krishna vs. Ram Chandra (1).

(1) 19 C. W. N., 823; s. c. 21 C. L. J., 487 (1915).

(3) I. L. R. 35 Cal., 82, at p. 99; s. c. 11 C. W. N., 1053 (F.B.) (1907).

(4) 2 W. R. (S. C. C. Refer.), 14; Rulings on Small Cause Court References, p. 113.

(5) 21 C. W. N., 505 (1916).

(6) 14 C. W. N., 629 (1910).

Durga Mohun vs. Sukumar (2), Kade Mondal vs. Ahadali Molla (6), Jadu Nath vs. Pran Krishna (7) and Peary Mandar vs. Anand Ram (8).

Baboo Asitaranjan Ghose in reply.

The Judgment of the Court was as follows:—

The Petitioners in these Rules were Defendants in certain suits instituted by the Opposite Parties for recovery of certain sums of money under agreements executed by the Petitioners in their favour. The main defence to the suit was, first, that the Small Cause Court had no jurisdiction to try the suits, and, secondly, that the order of the Revenue Officer in certain commutation proceedings was binding on the Plaintiffs in the suits in the Small Cause Court. These objections were overruled by the Small Cause Court. The Petitioners thereupon obtained these Rules.

The first question for consideration is whether the Small Cause Court had jurisdiction to try the suits.

The suits, as we have already said, were based upon certain agreements. The agreements in these cases are all similar in their nature, and we will refer to one of them. The *kabuliyat* is described as one for "agricultural labour for cultivating in partnership

(2) 19 C. W. N., 825; s. c. 21 C. L. J., 590 (1915).

(6) 14 C. W. N., 629 (1910).

(7) 27 C. L. J., 669 (1917).

(8) 20 C. W. N., xxxii (1915).

the *khas khamar* land" (খাস খামার জমির ভাগে চাষ আবাদ করা কৃষি মজুরিগিরির কবুলিয়তপত্র মিদর) The land is described as having been kept separate for a very long time on account of subsistence (জীবিকা) for the Malikis.

The *kabuliyat* then goes on to say "I having prayed for cultivating the same in partnership (ভাগে), you have granted my prayer I shall always grow paddy on the land. Every year, before growing crops, I shall ask you what kind of paddy shall have to be grown on which land, and shall grow paddy according to your desire. I shall not be able to grow any paddy or crops according to my own will. When in due course the paddy would be ripe, I shall cut it and take it to your house for thrashing." After stating that the executant would deliver a certain quantity of paddy to the owner, he says: "I shall get the remaining paddy and hay as remuneration for my cultivation, seeds, looking after and labour instead of money in cash."

The terms of the document show that it was not a settlement of the land with a tenant. The expression "agricultural labour" could not have been used in connection with a *rāiyati* settlement. The fact that the owner of the land would have the choice of a particular kind of paddy to be grown on the land clearly shows that the executant of the agreement had no interest in, or control over, the land: and, lastly, the clear stipulation that he would get the remaining paddy as his remuneration instead of money in cash shows the real nature of the instrument.

We are clearly of opinion that the contract was not one of letting out land by a landlord to a tenant, and that a suit based upon such a document is triable by the Small Cause Court.

The next question for consideration is whether the order of the Revenue Officer in the commutation proceedings is binding upon the Small Cause Court.

It appears that, in the course of settlement proceedings, these Defendants were recorded as settled *rāiyats* of the village, and that the Revenue Officer in the commutation proceedings, proceeding upon the said record-of-rights, made an order for commutation of the rent. Under Section 40 of the Bengal Tenancy Act commutation of rent can only take place in the case of an occupancy *rāiyat*. Here the Revenue Officer proceeded upon the Settlement record, which described the Defendants as occupancy *rāiyats*: and no doubt, if they were occupancy *rāiyats*, the order of the Revenue Officer commuting the rent would be binding.

We have, however, found that the Defendants, far from being occupancy *rāiyats*, are not tenants at all. That is also the finding of the Small Cause Court Judge. That being so, the order of the Revenue Officer in the commutation proceedings cannot be binding upon the Small Cause Court.

As was pointed out by Mookerjee, J., in *Kali Krishna Biswas v. Ram Chandra Baiday* (1), when the essential foundation for the exercise of jurisdiction under Section 40 of the Bengal Tenancy Act, namely, that the tenant whose rent was sought to be commuted was an occupancy *rāiyat*, is proved to be non-existent, the order made by the Revenue Court for commutation is without jurisdiction and is not conclusive between the parties in the Civil Court. This case was followed in the case of *Durga Mohan Gangopadhyaya v. Sukumar Das* (2).

It is contended, on behalf of the Petitioners, that the Revenue Officer proceeded upon the Settlement record, that an entry in the record-of-rights raises a presumption under Section 103 (b) of the Bengal Tenancy Act as to its correctness, and that, although it may be open to an ordinary Civil Court to go into the question as to its correctness, a Small Cause Court has got no such powers.

The Petitioner, no doubt, had the entry—

(1) 19 C. W. N., 823 : s. c. 21 C. L. J., 487 (1915)

(2) 19 C. W. N., 825 : s. c. 21 C. L. J., 590 (1915)

Sheikh Pokhan v. Rajani Kamal Chuckerbutty

in the record-of-rights in his favour, and he accordingly started with a presumption in his favour, but it was not necessary to have that entry set aside or to directly decide the question of status. It was open to the Plaintiff to show the incorrectness of the entry and thereby rebut the presumption raised by it, because the presumption afforded by the entry under Section 103 is a rebuttable one. That being so, the Small Cause Court was quite competent to go into the question.

It is true that the learned Small Cause Court Judge does not expressly refer to the presumption arising from the entry in the record-of-rights in his judgment. But the fact that there was such an entry was present to the mind of the learned Judge, as he referred to the order in the commutation proceedings, which mentions the entry. Were it not that the agreement on which the suit is based was so clear, it might have been necessary to remand the case to the Lower Court. The document, however, clearly shows that no tenancy of any kind was created under it. That being so, we think it unnecessary to remand the case, seeing that the order of the Revenue Officer in the commutation proceedings was based on the mere fact that the document was described as a *kabuliyat*, and not as an agreement.

The Rules are accordingly discharged with costs Rs. 35, to be equally divided among the seven cases.

Rules discharged.

H. C. S.

No. $\frac{XXV}{2}$ —4741, dated Calcutta, the 30th May 1921.

From—F. A. SACHSE, Esq., I.C.S., Director of the Department of
Land Records, Bengal,

To—The Secretary to the Government of Bengal, Revenue
Department.

I HAVE the honour to refer to Mr. F. D. Ascoli's letter of 31st March 1917, which is printed at the beginning of the Final Report on the Survey and Settlement Operations in the district of Dacca.

When this report was submitted to Government, case work had hardly begun, and a supplementary report was promised. This report, which is now forwarded, is the work of Babu Kalipada Maitra, who was for a long time Mr. Ascoli's right-hand man in the Dacca Settlement. In addition to case work, it deals briefly with the other stages, which were not complete when Mr. Ascoli left the district, and also analyses the final accounts of the settlement.

Cases were filed under section 105 relating to 75,334 tenancies for 64,060 of which fair rents were settled by the Revenue Courts. The new rent settled was Rs. 1,02,624 in excess of the old, involving an enhancement of 24·9 per cent., of which 13 per cent. was due to excess area, the remainder being justified mainly on account of rise of prices under section 30(b). The figures are extraordinarily similar to those of Mymensingh, and the same may be said of the difficulties and the problems encountered. In section 27 of the supplementary report the author recommends that when the Tenancy Act is next amended, it should be considered whether—

- (1) it is fair that the landlords should be awarded costs in section 105 cases, which are purely for their own benefit ;
- (2) the hands of the Revenue Officers should be strengthened as regards refusing to grant increased rent for that portion of the excess area which they know to be nominal, being due merely to the rough and ready system of calculating area employed at all *zemindary* surveys as opposed to the exactness of the settlement survey based on traverse. From section 22 it will be seen that in one case the Special Judge advanced the theory that in some villages the balance of error might have been in the direction of showing areas greater than they really were instead of invariably under-measuring in the interests of the *rāiyats*, and he thought that the allowance for the exclusion of field boundaries should not be more than 2 per cent. ;
- (3) whether co-sharer landlords should be allowed to file applications under section 105 separately. In spite of section 188, it has been held that they can file suits under section 106 separately, because they do so not as landlords, but as members of the general public. This argument can hardly be applied to applications under section 105, and the Judicial Rulings on the subject are entirely conflicting ;
- (4) whether, in cases where 100 or more tenants are concerned, and, as a rule, the question is an all-round enhancement of rent on general principles, it is necessary to delay the proceedings, in order to substitute the heirs of deceased persons, to appoint Court guardians, etc. The law should make it clear that the elaborate procedure of the Civil Court need not be applied in full to the proceedings of these Revenue Courts.

The present law on these and other points of less importance has been criticised on very much the same lines in my report on the Mymensingh operations, *vide* paragraphs 462, 299, 302 and 460. In a very interesting note on commutation, Babu Kalipada Maitra also voices the opinion of many

Settlement Officers as regards the difficulty of giving equitable effect to the commutation provisions of the Tenancy Act, especially with regard to *bargā rāiyats*.

There is no doubt that in many areas the landlords' main grievance against the settlement record is that the produce-paying cultivators are recorded as occupancy *rāiyats* according to the law, and that, if the entry did not carry with it a right of commutation under section 40, they would probably be quite willing to admit existing facts. A suggestion is made in this report that Government should pay compensation to the landlord, but it would probably be quite sufficient if, as the late Major Jack suggested, a reasonable *nazar* were made payable by the *bargādār*.

The net expenditure on this settlement was Rs. 24,54,357, Rs. 23,000 less than the figure given as probable in the main report. It was arranged that the cost of the abortive traverse done in 1909 should not fall on the people of the district, so the total amount to be realised from the private parties, including the Local Government, was Rs. 17,52,752. Actually Rs. 22,14,704 was collected. The reasons for this are clear. When the apportionment proposals were submitted, and recovery began, there was no expectation that the actual expenditure could be kept under the estimate based on the standard rate as recently revised, or that the receipts in stamps and from the sale of maps and records would reach such a high figure. The outbreak of war and the slump in the price of jute forced the authorities to provide for the possibility of a large number of irrecoverable demands, and this they did by assessing every demand under ten rupees in multiples of four annas, and demands exceeding ten rupees in multiples of rupees. In the end, as the Assistant Settlement Officer says, the *rāiyats* showed their appreciation of the record and maps by paying up their demand in full without any trouble at all.

In conclusion, I have the honour to record my appreciation of the way in which the author of this report and Babu Pramatha Nath Datta worked to polish off the concluding stages of this settlement after the departure of the Settlement Officer.



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